



Inland Empire Waterkeeper

Advocacy • Education • Restoration • Enforcement

6876 Indiana Avenue, Suite D
Riverside, CA 92506
Phone (951) 530-8823
Fax (951) 530-8824
Website www.iewaterkeeper.org

April 15, 2015

Via U.S. Certified Mail

American Arrow, LLC
Attention: Hasmik Kupalyan
15303 Arrow Boulevard
Fontana, California 92335

All Toyot Auto Dismantling
Attention: Mohammed Reza Teherian
8569 Beech Ave. #B
Fontana, CA 92335

Infiniti & Nissan Auto Dismantling
Attention: Avo Arutunan
15303 Arrow Boulevard #A
Fontana, California 92335

American Dismantling
Attention: Hasmik Kupalyan
15303 Arrow Boulevard #B
Fontana, CA 92335

Empire Auto Dismantling
Attention: Gevork Adzhinyan
8569 Beech Ave. #C
Fontana, California 92335

RE: Notice of Intent to File Suit for Violations of the Federal Water Pollution Control Act

To Whom It May Concern:

This letter constitutes notice of intent to file a citizen suit pursuant to 33 U.S.C. § 1365(b)(1)(a) by Orange County Coastkeeper and Inland Empire Waterkeeper (collectively "Waterkeeper") against the following parties for clear and ongoing violations of the Federal Water Pollution Control Act ("Clean Water Act")¹ and California's General Industrial Storm Water Permit²: American Arrow, LLC ("American Arrow"); Taherian, Mohammad R. DBA All Toyot Auto Dismantling ("All Toyot"); Adzhinyan, Gevork DBA Empire Auto Dismantling ("Empire"); Dorian, Tigren DBA Infiniti & Nissan Auto Dismantling ("Infiniti & Nissan"); and American Dismantling, Inc. ("American Dismantling") (hereinafter collectively referred to as "Parties"). If left unabated, the continuing violations described in this Notice of Intent to File Suit will further degrade water quality of the Etiwanda/San Seivaine Channel, the Santa Ana River, and the Pacific Ocean shoreline, all of which are waters of the United States.

¹ 33 U.S.C. § 1251 *et seq.* (2012).

² National Pollution Discharge Elimination System General Permit No. CAS000001, Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ.

This letter addresses unlawful unpermitted pollutant discharges originating from adjoining parcels ("Property") that American Arrow owns and controls in Fontana, California. These parcels are located at 8569 Beech Avenue and 15303 Arrow Boulevard. American Arrow leases these parcels to auto dismantlers: Empire, Infiniti & Nissan, All Toyot, and American Dismantling. These tenant operators are regulated as industrial dischargers under National Pollutant Discharge Elimination System ("NPDES") General Permits. 33 U.S.C § 1342. These tenant operators have engaged and continue to engage in violations of the NPDES General Permit at the Properties, thereby violating the Clean Water Act. Furthermore, American Arrow is liable as a discharger of pollutants pursuant to 33 U.S.C. § 1311(a) for discharge without an NPDES permit.

The Clean Water Act requires a citizen to provide notice of intent to file suit sixty (60) days prior to the initiation of a civil action. 33 U.S.C. § 1365(b)(1)(A). Notice must be given to the alleged violator, to the U.S. Environmental Protection Agency ("EPA"), and to the state in which the violations occur. *Id.* This letter provides notice of the violations that have occurred and continue to occur at the Properties. The Parties are hereby placed on formal notice that, after the expiration of sixty days from the date of this Notice of Intent to Sue, Waterkeeper will file suit in federal court against the Parties for Clean Water Act violations.

I. BACKGROUND

A. Orange County Coastkeeper and Inland Empire Waterkeeper.

Inland Empire Waterkeeper is a program of Orange County Coastkeeper. Inland Empire Waterkeeper's office is located at 6876 Indiana Avenue, Suite D, Riverside, California 92506. Orange County Coastkeeper is a non-profit public benefit corporation organized under the laws of the State of California with its office at 3151 Airway Avenue, Suite F-110, Costa Mesa, California 92626. Together, Orange County Coastkeeper and Inland Empire Waterkeeper have over 2,000 members who live and/or recreate in and around the Santa Ana River watershed. Waterkeeper is dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of surface waters in Orange County and the Inland Empire. To further these goals, Waterkeeper actively seeks federal and state agency implementation of the Clean Water Act, and, where necessary, directly initiates enforcement actions on behalf of itself and its members.

Waterkeeper's members use and enjoy the Santa Ana River and its tributaries, Etiwanda/San Sevaine Channel, and the Pacific Ocean and its shoreline (collectively "Receiving Waters"), into which pollutants from the Parties' ongoing illegal activities are discharged. Waterkeeper members enjoy the Pacific Ocean and its shoreline, into which contaminants from the Santa Ana River and Etiwanda/San Sevaine Channel flow. Waterkeeper's members use these areas to fish, sail, boat, paddleboard, canoe, kayak, swim, surf, hike, view wildlife, and engage in scientific study including monitoring activities. Discharges of polluted storm water and non-storm water from the Parties' facilities degrade water quality and harm aquatic life in the Receiving Waters and impair each of Waterkeeper's members' use and enjoyment of those waters. Further, the Parties' discharges of polluted storm water are ongoing and continuous. Thus, the interests of Waterkeeper's members have been, are being, and will continue to be

adversely affected by the Parties' failure to comply with the Clean Water Act and the NPDES General Permit.

B. The Owners and/or Operators of the Automotive Dismantling Facilities.

Information available to Waterkeeper indicates that American Arrow is the owner of properties upon which the Parties' operate. The Property Information Management System for the County of San Bernardino lists American Arrow as the sole owner of parcel 0232-141-20-0000 at 8569 Beech Ave., and parcels 0232-141-0000 and 0232-141-02-0000 at 15303 Arrow Ave. American Arrow is an active Limited Liability Company registered in California located at 15303 Arrow Boulevard, Fontana, California 92335. American Arrow is an owner as well as an operator of American Dismantling.

Information available to Waterkeeper indicates that Taherian, Mohammad, R, an individual DBA All Toyot Auto Dismantling is an active business registered in California located at 8569 Beech Ave., STE B, Fontana, California 92335-1261. All Toyot operates automotive dismantling facilities on American Arrow's property. The State Water Resources Control Board ("State Board") confirmed receipt of the Notice of Intent to Obtain Storm Water Permit coverage ("NOI Receipt") for All Toyot on March 27, 2009. **Exhibit 2.** All Toyot's Notice of Intent ("NOI") and NOI Receipt identify the operator of the All Toyot facility as "All Toyot Auto Dismantling" and lists the contact person as Mohammad Reza Taherian. All Toyot's NOI is undated. The NOI and NOI Receipt identify All Toyot's facility name as "All Toyot Auto Dismantling" at "8569 Beech Ave B Fontana CA 9233." **Exhibit 2.** The State Board Storm Water Multiple Application & Report Tracking System ("SMARTS") identifies the All Toyot facility owner/operator as "All Toyot Auto Dismantling" and the address as "8569 Beech Ave B Fontana California 92335." **Exhibit 2.** SMARTS identifies the All Toyot facility name and location as "All Toyot Auto Dismantling 8569 Beech Ave B Fontana California 92335" and lists the All Toyot facility coverage under the Storm Water Permit as "Active." **Exhibit 2.** All Toyot's NOI, All Toyot's NOI Receipt and SMARTS lists the All Toyot facility Waste Discharge Identification ("WDID") number as 836I022090. **Exhibit 2.**

Information available to Waterkeeper indicates that Adzhinyan Gevork, an individual DBA Empire Auto Dismantling is an active business registered in California located at 8569 Beech Ave #C, Fontana, California 92335. Empire operates automotive dismantling facilities on American Arrow's property. The State Board confirmed receipt of the NOI for Empire on July 07, 2010. **Exhibit 6.** Empire's NOI is undated. Empire's NOI and NOI Receipt identify the facility name as "Empire Auto Dismantling" at "8569 Beach Ave No C Fontana CA 92335." **Exhibit 6.** Empire's NOI and NOI receipt identify the operator of the Empire facility as "Empire Auto Dismantling" and lists the contact person as George Adzhinyan. **Exhibit 6.** SMARTS identifies the Empire facility owner/operator as "Empire Auto Dismantling" and the address as "8569 Beach Ave No C Fontana California 92335." **Exhibit 6.** SMARTS identifies the Empire facility name and location as "Empire Auto Dismantling 8569 Beach Ave No C Fontana California 92335" and lists the facility's coverage under the Storm Water Permit as "Active." **Exhibit 6.** Empire's NOI, NOI Receipt and SMARTS lists the facility WDID number as 836I022710. **Exhibit 6.**

Information available to Waterkeeper indicates that Dorian Tigren, an individual DBA Infiniti & Nissan Auto Dismantling is an active business registered in California located at 15303 Arrow Highway Unit A, Fontana, California 92335. Infiniti & Nissan operates automotive dismantling facilities on American Arrow's property. The State Board confirmed receipt of the NOI for Infiniti & Nissan on June 03, 2011. **Exhibit 10.** Infiniti & Nissan's NOI and NOI Receipt identify the facility name as "Infiniti & Nissan Auto Dismantling" at "15303 Arrow Blvd Ste A Fontana CA 92335." **Exhibit 10.** Infiniti & Nissan's NOI and NOI Receipt identify the operator of the facility as "INFINITI & NISSAN AUTO DISMANTLING" and lists the contact person as Avo Arutunyan. **Exhibit 10.** SMARTS lists the Infiniti & Nissan facility owner/operator as "INFINITI & NISSAN AUTO DISMANTLING" and the address as "15303 ARROW BLVD #A, FONTANA California 92335." **Exhibit 10.** SMARTS identifies the Infiniti & Nissan facility name and location as "Infiniti & Nissan Auto Dismantling 15303 Arrow Blvd Ste A Fontana California 92335" and lists the facility's coverage under the Storm Water Permit as "Active." **Exhibit 10.** Infiniti and Nissan's NOI, NOI Receipt and SMARTS lists the facility WDID number as 836I023175. **Exhibit 10.**

Information available to Waterkeeper indicates that American Dismantling is an active Limited Liability Company registered in California located at 15303 Arrow Hwy, Fontana, California 92335. American Dismantling operates automotive dismantling facilities on American Arrow's property. The State Board confirmed receipt of the NOI for American Dismantling on July 11, 2012. **Exhibit 13.** American Dismantling's NOI is undated. American Dismantling's NOI and NOI Receipt identify the facility name as "American Dismantling Inc" and address as "15303 Arrow Hwy Fontana CA 92335." **Exhibit 13.** American Dismantling's NOI and NOI Receipt identify the operator of the facility as "American Dismantling, Inc." and contact person as Hasmik Kupalyan. **Exhibit 13.** SMARTS identifies the American Dismantling facility owner/operator as "American Dismantling, Inc" and the facility address as "15303 Arrow Hwy Fontana California 92335." **Exhibit 13.** SMARTS identifies the American Dismantling facility name as "American Dismantling Inc" and the facility address as "15303 Arrow Hwy Fontana California 92335." SMARTS lists the American Dismantling facility's coverage under the Storm Water Permit as "Active." **Exhibit 13.** American Dismantling's NOI, NOI Receipt and SMARTS lists the facility WDID number as 836I023719. **Exhibit 13.**

C. The Facilities Storm Water Permit Coverage.

The Storm Water Permit is a statewide general NPDES permit issued by the State Board pursuant to Section 402 of the Clean Water Act. States with approved NPDES permit programs are authorized by Section 402(b) to regulate industrial storm water discharges through individual NPDES permits issued to dischargers and/or through the issuance of a statewide general NPDES permit applicable to all industrial storm water discharges. 33 U.S.C. § 1342. Prior to beginning industrial operations, dischargers are required to apply for coverage under the Storm Water Permit by submitting a Notice of Intent to Comply with the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity to the State Board. *See* Storm Water Permit.

All Toyot submitted an NOI for its facility which was approved by the Santa Ana Regional Water Quality Control Board ("Regional Board"). All Toyot's NOI indicates that the

All Toyot facility is approximately in 0.75 acres in size. **Exhibit 2.** All Toyot's NOI and NOI Receipt list the WDID for the facility as 836I022090. **Exhibit 2.** All Toyot's NOI and NOI Receipt list the Standard Industrial Classification ("SIC") code for the facility as 5015 (Motor Vehicle Parts, Used). **Exhibit 2.**

Empire submitted an NOI for its facility which was approved by the Regional Board. Empire's NOI indicates that the Empire facility is approximately 420 square feet in size, and the Storm Water Pollution Prevention Plan ("SWPPP") for the facility indicates that the facility is half an acre. **Exhibit 6.** Empire's NOI and NOI Receipt list the WDID number for the facility as 836I022710. **Exhibit 6.** Empire's NOI and NOI Receipt list the SIC code for the facility as 5015 (Motor Vehicle Parts, Used). **Exhibit 6.**

Infiniti & Nissan submitted an NOI for its facility which was approved by the Regional Board. Infiniti & Nissan's NOI indicates that the Infiniti & Nissan facility is approximately 5,000 square feet in size. **Exhibit 10.** Infiniti & Nissan's NOI and NOI Receipt list the WDID number for the facility as 836I023175. **Exhibit 10.** Infiniti & Nissan's NOI and NOI Receipt list the SIC code for the facility as 5015 (Motor Vehicle Parts, Used). **Exhibit 10.**

American Dismantling submitted an NOI for its facility which was approved by the Regional Board. American Dismantling's NOI indicates that the American Dismantling facility is approximately 0.68 acres in size. **Exhibit 13.** American Dismantling's NOI and NOI Receipt list the WDID number for the facility as 836I023719. **Exhibit 13.** American Dismantling's NOI and NOI Receipt list the SIC code for the facility as 5015 (Motor Vehicle Parts, Used). **Exhibit 13.**

D. Storm Water Pollution and the Waters Receiving the Parties' Discharges.

All Toyot's NOI identifies the "Santa Ana River" as the name of the water receiving discharges from its facility. Empire's NOI identifies the "Santa Ana River" as the name of the water receiving discharges from its facility. Infiniti & Nissan's NOI identifies the "Santa Ana River" as the name of the water receiving discharges from its facility. American Dismantling's NOI identifies the "Santa Ana River" as the name of the water receiving discharges from its facility. Based on Waterkeeper's site investigations and review of publicly available information about area surface waters, pollutants from the facilities discharge to the Etiwanda/San Sevaine Channel and eventually flow to the Santa Ana River and Pacific Ocean. The Santa Ana River, the Etiwanda/ San Sevaine Channel, a tributary to the Santa Ana River, and the Pacific Ocean are waters of the United States. Discharges of polluted storm water to the Etiwanda/San Sevaine Channel pose carcinogenic and reproductive toxicity threats to the public and adversely affect the aquatic environment. The Etiwanda/San Sevaine Channel is located to the east of Arrow Route. To the water's east are residential and industrial development areas; to the north and west are residential developments; and to the south is an industrial development area. The channel provides environmental enhancements, water conservation, flood control facilities and recreational facilities to a large portion of the San Bernardino Valley.

Every storm event causes millions of gallons of polluted storm water from industrial operations to pour into storm drains and local waterways. A storm event is a rainfall event with

greater than 0.1 inches of rainfall. 40 C.F.R. § 122.21(g)(7)(ii). Storm drain inlets are openings placed on the streets which allow excess water to drain and enter the storm drain system. Pollutants discharge to the Receiving Waters via storm drain inlets and into the City of Fontana's storm drain system.

Such pollutant discharges from the industrial facilities contribute to the degradation of the Etiwanda/San Sevaine Channel and the Pacific Ocean and its shoreline. Pollutant discharges from the Operators also contribute to the degradation of the Santa Ana River, an impaired surface water, and aquatic dependent wildlife. It is critical to control these contaminant discharges to promote the health of the Santa Ana River, the Etiwanda/San Sevaine Channel, the Pacific Ocean and its shoreline.

II. THE FACILITIES AND ASSOCIATED DISCHARGES OF POLLUTANTS

A. The Facility Site Descriptions.

All Toyot, Empire, Infiniti & Nissan, and American Dismantling together occupy three parcels of land owned by American Arrow, currently designated by the San Bernardino County Property Information Management System as Parcel 0232-141-20-0000 at 8569 Beech Ave., Parcel 0232-141-01-0000 and Parcel 0232-141-02-0000 at 15303 Arrow Ave.

Beech Avenue is located to the south of Arrow Boulevard. The facilities are surrounded by several auto dismantling operators. Each facility is comprised of a building, an outdoor area, and outdoor sheds. Infiniti & Nissan is situated in the northwest corner, bordered by Arrow Route and Beech Avenue. American Dismantling is located to the right of Infiniti, on Arrow Route. All Toyot is situated to the south of Infiniti & Nissan and to the north of Empire. All Toyot and Empire are located between Beech Avenue and Sultan Avenue. All Toyot and Empire are located along Beech Avenue.

Empire's SWPPP describes the Empire facility as a "long narrow piece running north to south. The only entrance is at the south end of the property along side the main office building located in the east corner. The dismantling and repair building is located in the west end of the site. The property is a combination of concrete and dirt surfaces and surrounded by corrugated metal fencing. The west end of the property is slightly angled with the south side of the property being 15 feet longer than the north." **Exhibit 8.** Waterkeeper currently does not have the SWPPP of All Toyot, Infiniti & Nissan, and American Dismantling.

The point of egress/ingress to the Empire and All Toyot facilities include one (1) driveway along Beech Avenue. The point of egress/ingress to the Infiniti and American Dismantling facilities include one (1) driveway along Arrow Boulevard.

B. The Parties' Industrial Activities and Associated Pollutants.

Information available to Waterkeeper indicates that the Parties' industrial activities and areas of industrial activity are pollutant sources. The Parties conduct dismantling and/or wrecking activities of used motor vehicles for parts recycling or resale and for scrap. Discharges

of polluted storm water and non-storm water from automobile salvage yards can carry numerous hazardous wastes. The Parties store and/or generate hazardous wastes such as engine oil, hydraulic fluid, transmission fluid, gear oil, grease, antifreeze, coolant, red dye diesel, used oil, waste absorbent, household hazardous waste, fluff, metals, batteries, soap solvents, and pH affecting substances. Pollutants associated with operations at the facilities include, but are not limited to: suspended solids, aluminum, iron, lead, zinc, and copper. Many of these pollutants are on the list of chemicals published by the State of California as known to cause cancer and/or developmental or reproductive harm. Discharges of polluted storm water and non-storm water to the Receiving Waters pose carcinogenic and reproductive toxicity threats to the public and adversely affect the aquatic environment.

Information available to Waterkeeper indicates that some or all of the industrial activity occur throughout the Parties' facilities without adequate cover to prevent storm water and non-storm water exposure to pollutant sources. Industrial activities also occur throughout the facilities outdoors without secondary containment or other adequate treatment measures to prevent polluted storm water and non-storm water from discharging from the facilities.

Information available to Waterkeeper, including photographs taken on site visits, indicates that automobile parts are stacked above the walls, unroofed and otherwise unshielded from the rain, around the entire perimeter of the Parties' facilities. **Exhibit 1.** Based on photographic evidence indicating a hole in the property wall at the southwest corner of the 8569 Beech Ave. property, Waterkeeper believes that storm water runoff drains, after major storm events, from north to south and pools at the southwest corner. **Exhibit 1.** Waterkeeper also believes that a large rock has been placed in front of the drainage hole to block storm water sample collection. There is photographic evidence of the rock and its continued presence in front of the hole. **Exhibit 1.** There are also oil stains, uncovered salvaged engine parts, and various chemical containers stored without secondary containment at the Empire facility. **Exhibit 9.** Regional Board Inspectors have observed that All Toyot's housekeeping was an issue because oil stains were seen near the dismantled vehicles, salvaged engine parts were not covered, and batteries were stored near the office trailers and the dismantling area. **Exhibit 3.** Regional Board Inspectors have observed that American Dismantling's concrete containment berm was in disrepair, that a fifty-five gallon drum of liquid soap was not properly placed in secondary containment, that there was evidence of outdoor washing at the site, and that there were various parts at the site grounds without secondary containment or cover. **Exhibit 15.**

To reduce pollution, dischargers must develop and implement a SWPPP prior to beginning industrial activity. The SWPPP must meet all requirements of the Storm Water Permit and must detail site-specific Best Management Practices ("BMPs") that ensure compliance with Effluent Limitations. The Parties have failed to adequately develop and/or implement required BMPs to prevent prohibited non-storm water discharges from discharging from their facilities. The Parties' have failed to adequately develop and/or implement BMPs sufficient to prevent polluted storm water from discharging from the facilities in violation of the Storm Water Permit and the Clean Water Act. The Parties' failure to properly address pollutants and their sources results in the discharge of pollutants from the operating facilities to the Etiwanda/San Sevaine Channel, the Santa Ana River, and the Pacific Ocean in violation of the Storm Water Permit and the Clean Water Act.

C. The Facilities' Storm Water Flows and Discharge Locations

All Toyot's 2010-2011 Annual Report, 2011-2012 Annual Report, and 2013-2014 Annual Report each indicate that there is one discharge location at the All Toyot facility. **Exhibit 2.** A discharge point at the All Toyot facility is located in the southwest corner of the property. **Exhibit 2.** Empire's Annual Reports indicate that there is one discharge location at its facility. **Exhibit 6.** American Dismantling's Annual Reports indicate that there is one discharge location at its facility. **Exhibit 14.** Infiniti & Nissan states in its 2012-2013 Annual Report that there is one discharge location at its facility. Infiniti & Nissan's 2013-2014 Annual Report indicates that there are zero discharge locations at its facility. **Exhibit 10.** Infiniti & Nissan's 2012-2013 Storm Water Monitoring Plan indicates that there is a discharge point in the southeast corner. **Exhibit 12.**

Information available to Waterkeeper indicates that a discharge point at the All Toyot facility was patched in November 2013, but upon a new storm event in March 2014, Waterkeeper observed a new hole in the southwest corner of the wall of 8569 Beech Ave. property to relieve runoff during storms from which leachate would pour into the street and down the storm drain on the Property. **Exhibit 1.**

III. THE PARTIES' VIOLATIONS OF THE CLEAN WATER ACT AND THE STORM WATER PERMIT

The Clean Water Act requires that any person discharging pollutants to a water of the United States from a point source obtain coverage under an NPDES permit. *See* 33 U.S.C. §§ 1311(a), 1342; 40 C.F.R. § 122.26(c)(1).

A. American Arrow's Violations of the Clean Water Act.

American Arrow is liable for effluent discharge from the properties it owns³ because it exercises sufficient control over the Properties to classify American Arrow as a discharger under the Clean Water Act. Therefore, American Arrow has violated, and continues to violate 33 U.S.C. § 1311(a), which prohibits discharge of pollutant to waters of the United States without an NPDES permit. Moreover, State Board precedents indicate that American Arrow operates the type of business that is obliged to obtain an NPDES permit in the State of California.

1. Federal Case Law Supports American Arrow's Liability for Discharge under the Clean Water Act.

American Arrow exhibits sufficient control over the Properties to be liable as a discharger. Where a party controls a point source through which discharge travels, that party may be liable for discharges in violation of the Clean Water Act. *See U.S. v. Lucas*, 516 F.3d 316, 336 (5th Cir. 2008) (where the defendant controlled the septic systems that failed because the

³ The Property Information Management System for the County of San Bernardino ("PIMS") lists "American Arrow LLC" as the sole owner of parcel 0232-141-10-0000, the parcel at 8569 Beech Ave. PIMS also lists "American Arrow LLC" as the sole owner of parcels 0232-141-01-0000 and 0232-141-02-0000, the commercial and industrial land use parcel designations of 15303 Arrow Ave.

defendant designed, certified, and retained contractors to install the failed septic systems); *Comm. to Save Mokelumne River v. East Bay Mun. Utility Dist.*, 13 F.3d 305, 308–309 (9th Cir. 1993) (where the defendants built and operated, and thus controlled, a facility designed to contain contaminated water on the defendant’s property from which discharge emanated); *Sierra Club v. Abston Const. Co. Inc.*, 620 F.2d 41, 45 (5th Cir. 1980) (where the defendants were owners and operators, and thus in control, of the mining enterprise that produced effluent discharge from spoil piles built by the miners); *Friends of the Sakonnet v. Dutra*, 738 F. Supp. 623, 630–33 (D. Rhode Island 1990) (where the court held that the party in control of a community septic system, not the thirty-three homes in the neighborhood whose waste traveled to the septic system, was the party liable for the effluent discharge).

Whether American Arrow produced the effluent discharged is irrelevant to the issue of responsibility stemming from control of a point source. *See U.S. v. Lucas*, 516 F.3d 316, 337 (5th Cir. 2008) (holding party in control of a septic system liable for discharge of waste through the system that party in control did not produce); *Comm. to Save Mokelumne River v. East Bay Mun. Utility Dist.*, 13 F.3d 305, 308–309 (9th Cir. 1993) (holding defendant dam operators liable for effluent discharge that existed on defendant’s property before defendant’s ownership of the property); *Friends of the Sakonnet v. Dutra*, 738 F. Supp. 623, 630–33 (D.R.I. 1990) (holding the party in control of a septic system, not the parties that produced effluent discharge, was the party responsible for discharge from the failed septic system).

Even if American Arrow does not control the day-to-day operations of its tenants, American Arrow, as a landowner, retains a sufficient measure of control over its property here because it could act to prevent structural modification of its property that results in discharge. In March of 2013, Waterkeeper observed a hole in the wall of the portion of the property located at the southwest corner of the 8569 Beech property from which storm water runoff was released. **Exhibit 1.** That hole was patched in November of 2013. **Exhibit 1.** After a more recent storm event in March of 2014, Waterkeeper observed a new hole in the wall, of which there is photographic evidence of storm water runoff escaping from the improvised drain outlet. **Exhibit 1.** The appearance, disappearance, and reappearance of holes in the exterior wall of the property owned by American Arrow indicate a repeating pattern of discharging behavior caused by the operation of a facility used exclusively for auto-dismantling that is not fit for managing storm water runoff occurring after a storm event. A point source is defined as, “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, [or] well . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362. Thus, a hole in the exterior wall of its property is a point source.

Lucas is also instructive regarding the minimum standard required to demonstrate that a defendant has control over a point source. Defendants in *Lucas* “sold house lots and designed certified septic systems on wetlands but represented the lots as dry. 516 F.3d at 322. Septic systems are point sources for the purposes of the Clean Water Act. *Id* at 333. The defendants “could have been considered the ‘operators,’ as they were directly responsible for... certifying the septic systems that collected and discharged the waste, although a contractor handled the actual installation.” Even though the lot owners used the systems, the defendants “caused” the unlawful discharge from the systems. 516 F.3d at 337. Similarly, because American Arrow’s owner, Hasmik Kupalyan, is also the owner of American Dismantling, one of the American

Arrow tenants and an automotive dismantler, American Arrow has knowledge of the repeating pattern of holes in the wall of the Property. American Arrow's knowledge of the repeating discharge from the wall is tacit certification of the practice. Just as in *Lucas*, American Arrow "causes" the unlawful discharge from the point source, even though American Arrow, as a landowner, does not directly use the hole to discharge pollutants. Therefore, American Arrow is liable for discharge from a point source because of its failure to exercise control over its property to prevent effluent discharge due to structural modifications.

American Arrow can also be held liable for discharges under *Sakonet*. In *Sakonet*, the defendant owned a residential development despite knowing that the faulty septic system made the homes in which sewage ran uninhabitable. Even though the defendant sought to share or place liability for the discharges with the homeowners, the court held that the liability of the homeowners will not relieve the landowners of liability; the "discharges of the users do not in any way relieve the owners of the treatment works... for the treatment works' discharges." 738 F. Supp. at 631-32. Similarly, American Arrow has knowledge that the infrastructure of its property is faulty. An uncovered dirt lot property, without proper drainage, with a hole at the low side of the property that appears after a storm event, is not conducive to prevention of effluent discharge. Moreover, just as the defendant in *Sakonet* is liable as a landowner even without directly discharging through the point source, American Arrow is liable as well.

2. American Arrow is Liable for Violations of the Clean Water Act Due to NPDES Permitting Standards in California.

In California, the State Board has held that landowners are liable for effluent discharges under NPDES permitting requirements along with their discharging tenants, and that landowners may be jointly liable with the tenants for abatement of excessive discharge after the fact. According to the State Board, a Landowner may be required to obtain an NPDES permit based on two elements: knowledge of the discharging activity and the ability to control it. *See In the Matter of the Petition of U.S. Dept. of Agric., Forest Serv., Cal. St. Wat. Res. Bd., Order No. 1987 WL 54537 WQ 87-5 at *2.* The same knowledge and control standards apply to landowner liability to clean up and abatement orders issued by the State Board. *In the Matter of the Petition of San Diego Unif. Port Dist., Cal. St. Wat. Res. Bd., Order No. 1990 WL 272135 WQ 90-3 at *7.* American Arrow as a landowner should be held liable for the discharges of its tenants.

i. Knowledge

A landowner can be "held accountable, even without actual knowledge, where the activity permitted on the property might be expected, by a reasonable and prudent landlord, to result in a discharge." *Forest Service*, 1987 WL 54537 at n. 1 (where a mining company, due to its expertise, knew or should have known of the inherent risk of discharge in the context of mining operations). American Arrow's ownership of a property used exclusively for auto dismantling is analogous to the mining operation in *Forest Service*. Like mining, auto-dismantling is an industrial business involving risk that harmful effluents will pass into navigable waters if not properly and carefully managed. A court will find that one who allows his property to be used in such a manner reasonably should know that a discharge might occur. Thus, a court is likely to find that American Arrow likely has knowledge that discharges may occur from its tenants' facilities.

American Arrow almost certainly has constructive knowledge of unpermitted discharges from the Property. Prior investigations of the Property reveal auto parts stacked above the walls unroofed and otherwise unshielded from rain that are piled around the entire perimeter of the rented property. **Exhibit 1.** A hole in the wall at the southwest corner of the 8569 Beech property was patched after a prior storm event observed by Waterkeeper. **Exhibit 1.** Photographic evidence shows a new hole knocked into the wall to relieve runoff during a recent storm from which leachate was pouring into the street and down the storm drain. **Exhibit 1.** Moreover, American Arrow's principal officer operates an auto-dismantling facility on one of the parcels of American Arrow's property. Because American Arrow's owner is also the owner of American Dismantling, one of American Arrow's tenants, American Arrow likely has direct knowledge of American Dismantling's storm water discharge.

ii. Control

American Arrow is in control of the Properties to a sufficient degree to satisfy the "ability to control" element under the State Board decisions. The power to contract in a lease arrangement can make a landowner liable as a discharger. *In the Matter of San Diego Unified Port Dist.*, Cal. St. Wat. Res. Bd., 1990 WL 272135 at *4. In *San Diego Unified Port District*, the landowner knows of the potential for discharges from the leasing facilities and has the ability under lease provisions to control those activities. *Id* at *4. American Arrow and the Parties have contracted with one another in lease arrangements. American Arrow could have demanded through contract that its tenants comply with environmental regulations. Thus, a contract provision does not absolve a landowner of his liability for violations of the Clean Water Act.

American Arrow operates a business that should be permitted under California's NPDES permitting standards. American Arrow retains enough control over the portions of its premises from which discharge emanates to classify American Arrow as a discharger. Therefore, American Arrow is liable for discharge from its property.

B. The Clean Water Act Violations of All Toyot Auto Dismantling.

All Toyot has committed multiple violations of the Clean Water Act and/or the requirements of the Storm Water Permit. All Toyot's violations include: (1) storm water discharges contain elevated levels of pollutants; (2) failure to develop and/or implement an adequate Storm Water Pollution Prevention Plan; (3) failure to comply with the Storm Water Permit's monitoring and sampling requirements; and (4) failure to comply with the Storm Water Permit's reporting requirements.

1. Storm Water Discharges Contain Elevated Levels of Pollutants.

All Toyot's facility contains levels of pollutants, including aluminum, iron, zinc, TSS, lead, and copper, in excess of levels known to adversely impact aquatic species and the environment, Water Quality Standards ("WQS"), and EPA benchmarks in violation of the Storm Water Permit's Effluent Limitations and Receiving Water Limitations. Effluent limitations require dischargers to reduce pollutant concentrations in storm water discharges through the implementation of best management practices ("BMPs") that achieve best available technology

economically achievable (“BAT”) for toxic pollutants⁴ and best conventional pollutant control technology (“BCT”) for conventional pollutants⁵. To aid in assessing whether a discharger has properly met BAT and BCT requirements, the US EPA has published benchmarks for storm water pollutant concentrations in certain industrial categories. 65 Fed. Reg. 64746-01 (Oct 30, 2000)⁶. Sampling data collected by Waterkeeper at 8569 Beech Ave in February 2014 demonstrates that All Toyot has exceeded and continues to exceed these EPA pollutant benchmarks by significant margins. **Exhibit 16.** For instance, sampling shows that operations at 8569 Beech Ave have exceeded EPA pollutant benchmarks by the following percentages:

- Exceeded EPA Benchmark for Total Recoverable Aluminum by 2000%
- Exceeded EPA Benchmark for Total Recoverable Iron by 1700%
- Exceeded EPA Benchmark for Total Recoverable Zinc by 752%
- Exceeded EPA Benchmark for Total Suspended Solids by 500%
- Exceeded EPA Benchmark for Total Recoverable Lead by 331%
- Exceeded EPA Benchmark for Total Recoverable Copper by 236%

Date	Constituent	EPA Benchmark	Sample Value	Percent Exceedence
2/28/2014	Total Suspended Solids	100 mg/L	500 mg/L	500
	Total Recoverable Aluminum	0.75 mg/L	15 mg/L	2000
	Total Recoverable Iron	1.0 mg/L	17 mg/L	1700
	Total Recoverable Lead	0.0816 mg/L	0.27 mg/L	331
	Total Recoverable Zinc	0.117 mg/L	0.88 mg/L	752
	Total Recoverable Copper	0.0636 mg/L	0.15 mg/L	236

⁴ Toxic pollutants are listed at 40 C.F.R. § 401.15 and include copper, lead, and zinc, among others.

⁵ Conventional pollutants are listed at 40 C.F.R. § 401.16 and include biological oxygen demand, total suspended solids, oil and grease, and pH, among others.

⁶ See also, United States Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP) Authorization to Discharge Under the National Pollutant Discharge Elimination System, as modified effective May 27, 2009 (“Multi-Sector Permit”), Fact Sheet at 106.

These exceedences demonstrate that All Toyot has not implemented or formulated BMPs that achieve BAT and/or BCT standards. Furthermore, information available to Waterkeeper suggests that discharges from the All Toyot facility carrying elevated levels of pollutants have occurred since 2010 and will continue to occur during storm events and violate the prohibitions and limitations set forth in the Storm Water Permit. A list of these storm events is attached.

Exhibit 4. Each discharge in violation of the Effluent Limitations of the NPDES General Permit constitutes a separate violation of the Clean Water Act, and All Toyot is subject to civil penalties for each of these violations.

2. Failure to Develop and/or Implement an Adequate Storm Water Pollution Prevention Plan.

Facts also suggest that All Toyot has failed to implement or develop an adequate Storm Water Pollution Prevention Plan. To reduce pollution, dischargers must develop and implement a SWPPP prior to beginning industrial activity. The SWPPP must meet all requirements of the Storm Water Permit and must detail site-specific BMPs that ensure compliance with Effluent Limitations. Site compliance evaluations must be conducted once per annual reporting period, and the SWPPP should be revised based upon the results of inspection. Storm Water Permit § A(9) – (10).

On January 7, 2013, Regional Board Inspectors were refused access to the All Toyot facility and were unable to perform their annual evaluation. **Exhibit 3.** We have not established whether All Toyot has a SWPPP in place. Our Public Records Act requests provided only pictures of a SWPPP, but we do not yet have access to the document itself, if it exists. Notwithstanding the presence or absence of a SWPPP, Regional Board Inspectors observed upon visiting All Toyot that “housekeeping was an issue. Oil stains could be seen near the dismantled vehicles. Salvaged engine parts were not covered. Batteries were stored near the office trailers and dismantling area.” **Exhibit 3.** Since even cursory observation revealed numerous pollutant hazards, it is evident that All Toyot’s BMPs have not been implemented, are not adequate, or have not been formulated. Consequently, All Toyot’s SWPPP is insufficient under the Storm Water Permit.

3. Failure to Comply with the Storm Water Permit’s Monitoring and Sampling Requirements.

All Toyot Auto Dismantling has failed to collect storm water samples as required by the Storm Water Permit. Under the Storm Water Permit, facility operators are required to collect storm water samples during two storm events, provided that these storm events occur during facility operating hours and are preceded by at least three working days without storm water discharge. *See* Storm Water Permit §5(a)-(b). As detailed in its annual reports, All Toyot failed to gather required storm water samples for four consecutive annual periods, dating back to 2010. **Exhibit 5.** All Toyot gave the following reasoning for its failures:

- In 2010-2011, that “No qualified discharges occurred at the site during the season that were during working or did not have 3 previous days of dry weather, on weekends or during Christmas.”

- In 2011-2012, that the “site did not have a discharge this season as the water pools inside the property and evaporates. No storm was large enough this year to cause these to discharge into the storm water system.”
- In 2012-2013, that “all water on site ponds in the center area and in front of gate” and that “no rainfall this year was great enough to cause any discharges.”
- In 2013-2014, that “The rain water pools and evaporates unless storm is large & extended. We did not have any discharge in 2013-14.”

The storm events for the 2010-2011 period meeting the criteria for reportable events are as follows: Friday, October 1, 2010, .15 inches; Monday, October 25, 2010, .28 inches; Monday, November 8, 2010, .23 inches; Thursday, December 16, 2010, .17 inches; Wednesday, February 16, 2011, .39 inches; Friday, February 25, 2011, .46 inches; and Tuesday, May 17, 2011, .15 inches. Thus, All Toyot’s claim that there were no reportable instances of rainfall is false.

The storm events for the 2011-2012 period meeting the criteria for reportable events are as follows: Wednesday, October 5, 2011, 1.02 inches; Friday, November 4, 2011, .31 inches; Monday, December 12, 2011, .34 inches; Wednesday, February 15, 2012, .2 inches; Wednesday, April 11, 2012, .33 inches; and Thursday, April 26, 2012, .23 inches.

It is unlikely that water “pool[ed] and evaporate[ed] after the October 5, 2011 event. After a comparable rain event on Saturday, March 17, 2012, in which there was 1.07 inches of rainfall, with no prior rainfall for more than a month, Waterkeeper photographed discharge emanating from the Properties. All Toyot’s claim that “water pools and evaporates” is highly specious in light of the documented result following a similar storm event. Because 1.07 inches of rainfall on Saturday, March 17, 2012 produced the level of ground saturation apparent in Waterkeeper’s photographic evidence from the site, it is specious to claim that rainfall consisting of roughly one-third the amount of that day would produce only “water on site ponds in the center area.” Therefore, All Toyot is probably false in its argument that no discharge was produced following the storm events from for 2011-2012.

The storm events for the 2012-2013 period meeting the criteria for reportable events are as follows: Thursday, October 11, 2012, .28 inches; Thursday, November 8, 2012, .14 inches; Thursday, November 29, 2012, .15 inches; Wednesday, December 12, 2012, .19 inches; Tuesday, December 18, 2012, .28 inches; Monday, December 24, 2012, .27 inches; Thursday, January 24, 2013, .21 inches; Friday, February 8, 2013, .36 inches; Tuesday, February 19, 2013, .34 inches; Thursday, March 7, 2013, .12 inches; and Monday, May 6, 2013, .14 inches. Thus, All Toyot’s claim that there were no reportable instances of rainfall is false.

The storm events for the 2013-2014 period meeting the criteria for reportable events are as follows: Wednesday, October 9, 2013, .18 inches; Monday, October 28, 2013, .19 inches; Thursday, November 21, 2013, .70 inches; Thursday, December 19, 2013, .32 inches; Thursday, February 6, 2014, .13 inches; Thursday, February 27, 2014, .30 inches; Wednesday, April 2, 2014, .15 inches; and Friday, April 25, 2014, .25 inches. In addition to the documented storm events, photographs taken by Waterkeeper in March of 2014 depict significant discharge that tends to rebut the claim that All Toyot “did not have any discharge in 2013-14.”

The storm events for the 2014-2015 period meeting the criteria for reportable events are as follows: Friday, November 21, 2014, .2 inches; Friday, December 12, 2014, 1.6 inches; Monday, January 16, 2015, .29 inches; and Monday, February 23, 2015, .24 inches.

All Toyot failed and continues to fail to revise the Monitoring and Reporting Plan for the facility as necessary to ensure compliance with the Storm Water Permit, in violation of Section B(2)(d) of the Storm Water Permit. All Toyot has failed to collect two (2) samples from each of the discharge points over the past five years, and has failed to collect samples during the first storm event of the Wet Season over the past five years, as required by Section B(15) and B(5)(a) of the Storm Water Permit. All Toyot has also failed to conduct visual observations of storm water discharges from all discharge points from one storm even per month, in violation of Section B(4) of the Storm Water Permit. All Toyot has failed to document the presence of any floating or suspended material, oil and grease ("O&G"), discolorations, turbidity, odor, or the source of any pollutants, in violation of Section B(4) of the Storm Water Permit. All Toyot has failed and continues to fail to adequately revise the Monitoring and Reporting Plan ("M&RP") for the facility as necessary to ensure compliance with the Storm Water Permit, in violation of Sections A(9) and A(10) of the Storm Water Permit.

4. Failure to Comply with the Storm Water Permit's Reporting Requirements.

All Toyot has failed to submit Annual Reports that comply with Section B(14) of the Storm Water Permit. All Toyot's claims for its failure to collect storm water samples since 2010 are incorrect, in violation of Section B(14) and Section C of the Storm Water Permit. All Toyot has failed to report qualifying discharges in its annual reports since 2010 in violation of Section B of the Storm Water Permit.

All Toyot's certifications of compliance with the Storm Water Permit in each of its past four (4) Annual Reports were erroneous because All Toyot has not developed and/or implemented the required BMPs, as required by Section A and B of the Storm Water Permit. All Toyot's certifications of compliance with the Storm Water Permit in each of its past four (4) Annual Reports were erroneous because All Toyot has not revised the SWPPP, as required by Sections A and B of the Storm Water Permit. All Toyot's certifications of compliance with the Storm Water Permit in each of its past four (4) Annual Reports were erroneous because All Toyot has not revised the M&RP, as required by Sections A and B of the Storm Water Permit. All Toyot has failed and continues to fail to submit Annual Reports that contain explanations of their failures to implement activities required by the Storm Water Permit, as required by Section B(14) of the Storm Water Permit. All Toyot failed to submit accurate Annual Reports, in violation of Sections C(9) and C(10) of the Storm Water Permit. All Toyot failed to submit complete Annual Reports, in violation of Section B of the Storm Water Permit. All Toyot has failed and continues to fail to submit required reports when storm water discharges from the facility exceed the Storm Water Permit Receiving Water Limitations identifying what additional BMPs will be implemented to achieve WQS, in violation of Receiving Water Limitations C(3) and C(4) of the Storm Water Permit. These acts and omissions constitute violations of the Clean Water Act, civil liability for which rests with All Toyot.

C. The Clean Water Act Violations of Empire Auto Dismantling.

Empire has committed multiple violations of the Clean Water Act and/or the requirements of the Storm Water Permit. Empire's violations include: (1) storm water discharges contain elevated levels of pollutants; (2) failure to develop and/or implement an adequate Storm Water Pollution Prevention Plan; (3) failure to comply with the Storm Water Permit's monitoring and sampling requirements; and (4) failure to comply with the Storm Water Permit's reporting requirements.

1. Storm Water Discharges Contain Elevated Levels of Pollutants.

Empire's facility contains levels of pollutants, including aluminum, iron, zinc, TSS, lead, and copper, in excess of levels known to adversely impact aquatic species and the environment, WQS, and EPA benchmarks in violation of the Storm Water Permit's Effluent Limitations and Receiving Water Limitations. Data collected by Waterkeeper on February 28, 2014 show that discharges from Empire exceed NPDES General Permit Effluent Limitation standards. Sampling data collected by Waterkeeper at 8569 Beech Ave in February 2014 demonstrates that Empire has exceeded and continues to exceed these EPA pollutant benchmarks by significant margins. **Exhibit 16.** For instance, sampling shows that operations at 8569 Beech Ave have exceeded relevant EPA pollutant benchmarks by the following percentages:

Date	Constituent	EPA Benchmark	Sample Value	Percent Exceedence
2/28/2014	Total Suspended Solids	100 mg/L	500 mg/L	500
	Total Recoverable Aluminum	0.75 mg/L	15 mg/L	2000
	Total Recoverable Iron	1.0 mg/L	17 mg/L	1700
	Total Recoverable Lead	0.0816 mg/L	0.27 mg/L	331
	Total Recoverable Zinc	0.117 mg/L	0.88 mg/L	752
	Total Recoverable Copper	0.0636 mg/L	0.15 mg/L	236

The elevated pollutant levels demonstrate that Empire failed to develop BMPs that achieve BAT/BCT standards. Empire's storm water discharges contain levels of pollutants that adversely impact aquatic species and the environment in violation of Receiving Water Limitation C(1) and (2).

Information available to Waterkeeper suggests that discharges from the Empire facility carrying elevated levels of pollutants have occurred and will continue to occur during storm events. Each discharge in violation of the Effluent Limitations of the Storm Water Permit constitutes a separate violation of the Clean Water Act, and Empire is subject to civil penalties for each of these violations.

2. Failure to Develop and/or Implement an Adequate Storm Water Pollution Prevention Plan.

Empire has failed to implement an adequate SWPPP. Section A(1) of the Storm Water Permit requires dischargers to develop and implement a SWPPP that complies with the requirements of the Storm Water Permit prior to commencing industrial activities. The SWPPP must meet all requirements of the Storm Water Permit and must detail site-specific BMPs that ensure compliance with Effluent Limitations. Site compliance evaluations must be conducted once per annual reporting period, and the SWPPP should be revised based upon the results of inspection. Storm Water Permit §A. Empire has failed to include a site map of its facility in violation of Section A(4) of the Storm Water Permit. Furthermore, under Section A(8) of the Storm Water Permit, BMPs that must be considered include Good Housekeeping, Waste Handling, Inspections, and Retention Ponds. Empire's SWPPP states that it will accomplish Good Housekeeping by thoroughly cleaning the yard "of parts, dirt absorbent, fluids, trash and debris," by elevating and covering "rusty, oily, greasy and dirty materials," and by cleaning "immediately" areas where "fresh pollutants or pollutant residues are present on surfaces." SWPPP at 22-23. For Waste Handling, the SWPPP requires that "hazardous waste fluids will be located in secondary containment over concrete surfaces." SWPPP at 28. Under Inspections, the SWPPP requires that the "facility operator will conduct one comprehensive site compliance evaluation in each reporting period." SWPPP at 31.

Empire has failed to meet these SWPPP directives. On January 7, 2013 Regional Board Inspectors were refused access to the Empire facility and were unable to perform their annual evaluation. **Exhibit 9.** Even so, Regional Board Inspectors observed that "housekeeping was an issue. Oil stains could be seen near the dismantled vehicles. Salvaged engine parts were not covered. Various chemical containers were stored without secondary containment near the main office trailer." **Exhibit 9.** Photographs were taken of these numerous permit violations. **Exhibit 9.** Because even cursory observation revealed numerous pollutant hazards, it is evident that Empire's BMPs have not been implemented. Empire has not adhered to its SWPPP as required by the Storm Water Permit.

3. Failure to Comply with the Storm Water Permit's Monitoring and Sampling Requirements.

Empire has failed to collect storm water samples as required by the Storm Water Permit. Empire participates in group monitoring under SoCal Group Monitoring Plan ("GMP"). Under Section B of the Storm Water Permit, each GMP participant is required to collect and analyze samples from at least two storm events over the five-year period of the permit. However, for at least four annual reporting periods, Empire has failed to provide sampling data, stating that there has been "No Qualified Discharge." **Exhibit 7.** Empire's SWPPP also claims that storm water

pools and evaporates onsite and that the only discharges would occur to the adjoining lot to the west. **Exhibit 8.**

Rain data belies the accuracy of Empire's stated reasons for its lack of sampling data. The storm events for the 2010-2011 period meeting the criteria for reportable events are as follows: Friday, October 1, 2010, .15 inches; Monday, October 25, 2010, .28 inches; Monday, November 8, 2010, .23 inches; Thursday, December 16, 2010, .17 inches; Wednesday, February 16, 2011, .39 inches; Friday, February 25, 2011, .46 inches; and Tuesday, May 17, 2011, .15 inches. Thus, Empire's claim that there were no reportable instances of rainfall is false.

The storm events for the 2011-2012 period meeting the criteria for reportable events are as follows: Wednesday, October 5, 2011, 1.02 inches; Friday, November 4, 2011, .31 inches; Monday, December 12, 2011, .34 inches; Wednesday, February 15, 2012, .2 inches; Wednesday, April 11, 2012, .33 inches; and Thursday, April 26, 2012, .23 inches. It is unlikely that water pool[ed] and evaporate[ed] after the April 12, 2010 event. After a comparable event on Saturday, March 17, 2012, in which there was 1.07 inches of rainfall, with no prior rainfall for more than a month, Waterkeeper photographed discharge emanating from the Properties. Empire's claim that "water pools and evaporates" is highly specious in light of the documented result following a similar storm event.

The storm events for the 2012-2013 period meeting the criteria for reportable events are as follows: Thursday, October 11, 2012, .28 inches; Thursday, November 8, 2012, .14 inches; Thursday, November 29, 2012, .15 inches; Wednesday, December 12, 2012, .19 inches; Tuesday, December 18, 2012, .28 inches; Monday, December 24, 2012, .27 inches; Thursday, January 24, 2013, .21 inches; Friday, February 8, 2013, .36 inches; Tuesday, February 19, 2013, .34 inches; Thursday, March 7, 2013, .12 inches; and Monday, May 6, 2013, .14 inches. Because 1.07 inches of rainfall on Saturday, March 17, 2012 produced the level of ground saturation apparent in Waterkeeper's photographic evidence from the site, it is specious to claim that rainfall consisting of roughly one-third the amount of that day would produce "no qualified discharge." Therefore, Empire is probably incorrect in its argument that no discharge was produced following the storm events for 2012-2013.

The storm events for the 2013-2014 period meeting the criteria for reportable events are as follows: Wednesday, October 9, 2013, .18 inches; Monday, October 28, 2013, .19 inches; Thursday, November 21, 2013, .70 inches; Thursday, December 19, 2013, .32 inches; Thursday, February 6, 2014, .13 inches; Thursday, February 27, 2014, .30 inches; Wednesday, April 2, 2014, .15 inches; and Friday, April 25, 2014, .25 inches. In addition to the documented storm events, photographs taken by Waterkeeper in March of 2014 depict significant discharge that tends to rebut the claim that Empire "did not have any discharge in 2013-14."

The storm events for the 2014-2015 period meeting the criteria for reportable events are as follows: Friday, November 21, 2014, .2 inches; Friday, December 12, 2014, 1.6 inches; Monday, January 16, 2015, .29 inches; and Monday, February 23, 2015, .24 inches.

Empire has failed and continues to fail to revise the M&RP for the facility as necessary to ensure compliance with the Storm Water Permit, in violation of Section B(2)(d) of the Storm

Water Permit. Empire has failed to collect two (2) samples from each of the discharge points over the past five years, as required by Section B(15) and B(5)(a) of the Storm Water Permit. Empire has failed to collect samples during the first storm event of the Wet Season over the past five years, in violation of Section B(15) and B(5)(a) of the Storm Water Permit. Empire has failed to conduct visual observations of storm water discharges from all discharge points from one storm event per month in violation of Section B(4) of the Storm Water Permit. Empire has failed to document the presence of any floating or suspended material, O&G, discolorations, turbidity, odor, or the source of any pollutants, in violation of Section B(4) of the Storm Water Permit. Empire has failed and continues to fail to adequately revise the M&RP for the facility as necessary to ensure compliance with the Storm Water Permit, in violation of Sections A(9) and A(10) of the Storm Water Permit.

4. Failure to Comply with the Storm Water Permit's Reporting Requirements.

Empire has failed to meet reporting requirements under the Storm Water Permit. Empire has failed to submit Annual Reports that comply with Section B(14) of the Storm Water Permit. Facility operators are required to submit an Annual Report by July 1 of each year to the Executive Officer of the Regional Water Board. Storm Water Permit § B(14). Empire failed to submit timely report and was issued a Notice of Noncompliance by the California Regional Water Quality Control Board on July 25, 2010. **Exhibit 17.** Empire failed to give a reason for not collecting storm water samples in its 2013-2014 Annual Report, as required by Section B(14) of the Storm Water Permit. Empire has failed to report qualifying discharges in its Annual Reports in violation of Section B of the Storm Water Permit.

Empire's certifications of compliance with the Storm Water Permit in each of its past four (4) Annual Reports were erroneous because Empire has not developed and/or implemented the required BMPs, as required by Section A and B of the Storm Water Permit. Empire's certifications of compliance with the Storm Water Permit in each of its past four (4) Annual Reports were erroneous because Empire has not revised the SWPPP, as required by Sections A and B of the Storm Water Permit. Empire's certifications of compliance with the Storm Water Permit in each of its past four (4) Annual Reports were erroneous because Empire has not revised the M&RP, as required by Sections A and B of the Storm Water Permit. Empire has failed and continues to fail to submit Annual Reports that contain explanations of their failures to implement activities required by the Storm Water Permit, as required by Section B(14) of the Storm Water Permit. Empire failed to submit accurate Annual Reports, in violation of Sections C(9) and C(10) of the Storm Water Permit. Empire failed to submit complete Annual Reports, in violation of Section B of the Storm Water Permit. Empire has failed and continues to fail to submit required reports when storm water discharges from the facility exceed the Storm Water Permit Receiving Water Limitations identifying what additional BMPs will be implemented to achieve WQS, in violation of Receiving Water Limitations C(3) and C(4) of the Storm Water Permit. These acts and omissions constitute violations of the Clean Water Act, civil liability for which rests with Empire.

D. Clean Water Act Violations of Infiniti & Nissan Auto Dismantling.

Infiniti & Nissan has committed multiple violations of the Clean Water Act and/or the requirements of Storm Water Permit. Infiniti & Nissan's violations include: (1) storm water discharges contain elevated levels of pollutants; (2) failure to develop and/or implement an adequate Storm Water Pollution Prevention Plan; (3) failure to comply with the Storm Water Permit's monitoring and sampling requirements; and (4) failure to comply with the Storm Water Permit's reporting requirements.

1. Storm Water Discharges Contain Elevated Levels of Pollutants.

Given the industrial nature of Infiniti & Nissan's business, Infiniti & Nissan's storm water discharges more than likely contain impermissible concentrations of harmful pollutants regulated by the Storm Water Permit.

2. Failure to Develop and/or Implement an Adequate Storm Water Pollution Prevention Plan.

Infiniti & Nissan has failed to implement an adequate SWPPP. To reduce pollution, dischargers must develop and implement a SWPPP prior to beginning industrial activity. Under Section A(8) of the Storm Water Permit, BMPs that must be considered include Material Handling and Storage. We do not yet have Infiniti & Nissan's SWPPP; our Public Record Act yielded only its Storm Water Monitoring Plan. However, notwithstanding the presence or absence of the SWPPP, an inspection on January 7, 2013 revealed "several engine cores, cylinder heads, and other car parts stored outside without proper cover" constituting a violation of San Bernardino County Code Section 35.011(a). Infiniti & Nissan has not implemented BMPs for Material Storage before beginning industrial activity, as required by the Storm Water Permit. Consequently, Infiniti & Nissan is in violation of the Storm Water Permit by failing to implement an adequate SWPPP.

3. Failure to Comply with the Storm Water Permit's Monitoring and Sampling Requirements.

Information available to Waterkeeper indicates that Infiniti & Nissan has failed to meet Storm Water Permit monitoring and sampling requirements. Under the Storm Water Permit, facility operators are required to collect storm water samples during two storm events, provided that these storm events occur during facility operating hours and are preceded by at least three working days without storm water discharge. *See* Storm Water Permit §5(a)-(b). Infiniti & Nissan did not sample storm water discharge in the 2011-2012 period, stating in the annual report that there occurred "no qualified discharge." **Exhibit 11.** Infiniti & Nissan did not sample storm water discharge in the 2012-2013 period, stating in the annual report that there were "no valid rain events from which we could take a sample." **Exhibit 11.** Infiniti & Nissan also did not sample storm water discharge in the 2013-2014 period, but failed to give a reason for not doing so in its 2013-2014 Annual Report.

The storm events for the 2011-2012 period meeting the criteria for reportable events are as follows: Wednesday, October 5, 2011, 1.02 inches; Friday, November 4, 2011, .31 inches; Monday, December 12, 2011, .34 inches; Wednesday, February 15, 2012, .2 inches; Wednesday, April 11, 2012, .33 inches; and Thursday, April 26, 2012, .23 inches.

The storm events for the 2012-2013 period meeting the criteria for reportable events are as follows: Thursday, October 11, 2012, .28 inches; Thursday, November 8, 2012, .14 inches; Thursday, November 29, 2012, .15 inches; Wednesday, December 12, 2012, .19 inches; Tuesday, December 18, 2012, .28 inches; Monday, December 24, 2012, .27 inches; Thursday, January 24, 2013, .21 inches; Friday, February 8, 2013, .36 inches; Tuesday, February 19, 2013, .34 inches; Thursday, March 7, 2013, .12 inches; and Monday, May 6, 2013, .14 inches.

The storm events for the 2013-2014 period meeting the criteria for reportable events are as follows: Wednesday, October 9, 2013, .18 inches; Monday, October 28, 2013, .19 inches; Thursday, November 21, 2013, .70 inches; Thursday, December 19, 2013, .32 inches; Thursday, February 6, 2014, .13 inches; Thursday, February 27, 2014, .30 inches; Wednesday, April 2, 2014, .15 inches; and Friday, April 25, 2014, .25 inches.

The storm events for the 2014-2015 period meeting the criteria for reportable events are as follows: Friday, November 21, 2014, .2 inches; Friday, December 12, 2014, 1.6 inches; Monday, January 16, 2015, .29 inches; and Monday, February 23, 2015, .24 inches.

The substantial frequency of storm events during these periods indicate that discharge likely occurred from the Infiniti & Nissan site during that time. Consequently, data indicates that Infiniti & Nissan failed to report these discharges in its annual reports and failed to sample these discharges, constituting violations of the Storm Water Permit.

Infiniti & Nissan has failed and continues to fail to revise the M&RP for the facility as necessary to ensure compliance with the Storm Water Permit, in violation of Section B(2)(d) of the Storm Water Permit. Infiniti & Nissan has failed to collect two (2) samples from each of the discharge points over the past four years, as required by Section B(15) and B(5)(a) of the Storm Water Permit. Infiniti & Nissan has failed to collect samples during the first storm event of the Wet Season over the past four years, in violation of Section B(15) and B(5)(a) of the Storm Water Permit. Infiniti & Nissan has failed to conduct visual observations of storm water discharges from all discharge points from one storm event per month in violation of Section B(4) of the Storm Water Permit. Infiniti & Nissan has failed to document the presence of any floating or suspended material, O&G, discolorations, turbidity, odor, or the source of any pollutants, in violation of Section B(4) of the Storm Water Permit. Infiniti & Nissan has failed and continues to fail to adequately revise the M&RP for the facility as necessary to ensure compliance with the Storm Water Permit, in violation of Sections A(9) and A(10) of the Storm Water Permit.

4. Failure to Comply with the Storm Water Permit's Reporting Requirements.

Infiniti & Nissan has failed to submit Annual Reports that comply with Section B(14) of the Storm Water Permit. Infiniti & Nissan has failed to report storm water discharges for three

(3) consecutive Annual Reports since 2011. However, significant rain events during those periods indicate that discharge occurred. Infiniti & Nissan failed to report a reason for not collecting storm water samples in its 2013-2014 Annual Report, as required by Section B(14) of the Storm Water Permit. Waterkeeper believes that Infiniti has failed and continues to fail to report qualifying discharges in its Annual Reports in violation of Section B of the Storm Water Permit.

Infiniti & Nissan's certifications of compliance with the Storm Water Permit in each of its past three (3) Annual Reports were erroneous because Infiniti & Nissan has not developed and/or implemented the required BMPs, as required by Section A and B of the Storm Water Permit. Infiniti & Nissan's certifications of compliance with the Storm Water Permit in each of its past three (3) Annual Reports were erroneous because Infiniti & Nissan has not revised the SWPPP, as required by Sections A and B of the Storm Water Permit. Infiniti & Nissan's certifications of compliance with the Storm Water Permit in each of its past three (3) Annual Reports were erroneous because Infiniti & Nissan has not revised the M&RP, as required by Sections A and B of the Storm Water Permit. Infiniti & Nissan has failed and continues to fail to submit Annual Reports that contain explanations of their failures to implement activities required by the Storm Water Permit, as required by Section B(14) of the Storm Water Permit. Infiniti & Nissan failed to submit accurate Annual Reports, in violation of Sections C(9) and C(10) of the Storm Water Permit. Infiniti & Nissan failed to submit complete Annual Reports, in violation of Section B of the Storm Water Permit. Infiniti & Nissan has failed and continues to fail to submit required reports when storm water discharges from the facility exceed the Storm Water Permit Receiving Water Limitations identifying what additional BMPs will be implemented to achieve WQS, in violation of Receiving Water Limitations C(3) and C(4) of the Storm Water Permit. These acts and omissions constitute violations of the Clean Water Act, civil liability for which rests with Infiniti & Nissan.

E. Clean Water Act Violations of American Dismantling, Inc.

American Dismantling has committed multiple violations of the Clean Water Act and/or the requirements of the Storm Water Permit. American Dismantling's violations include: (1) storm water discharges contain elevated levels of pollutants; (2) failure to develop and/or implement an adequate Storm Water Pollution Prevention Plan; (3) failure to comply with the Storm Water Permit's Monitoring and Sampling Requirements; and (4) failure to comply with the Storm Water Permit's Reporting Requirements.

1. Storm Water Discharges Contain Elevated Levels of Pollutants.

Given the industrial nature of American Dismantling's business, American Dismantling's discharges more than likely contain impermissible concentrations of harmful pollutants regulated by the Effluent Limitations of the Storm Water Permit. Each unlawful discharge constitutes an independent violation of the Clean Water Act. American Dismantling is subject to civil penalties for all discharges occurring during its operation.

2. Failure to Develop and/or Implement an Adequate Storm Water Pollution Prevention Plan.

Under section A(8) of the Storm Water Permit, BMPs that must be considered include Good Housekeeping, Waste Handling, Inspections, and Retention Ponds. The particulars of American Dismantling's SWPPP are not known because we do not yet possess the document, if it exists. However, in a June 24, 2010 inspection of American Truck Dismantling's⁷ operations, Regional Board Inspectors observed that American Dismantling's concrete containment berm was in disrepair, a fifty-five gallon drum of liquid soap was not properly placed in secondary containment, there was evidence of outdoor washing at the site, and that there were various parts at the site grounds without secondary containment or cover. **Exhibit 15.** These deficiencies indicate that American Dismantling has not implemented adequate BMPs; therefore, American Dismantling has failed to implement a proper SWPPP and is in violation of the Storm Water Permit.

3. Failure to Comply with the Storm Water Permit's Monitoring and Sampling Requirements.

American Dismantling has failed to collect storm water samples as required by the Storm Water Permit. Under the Storm Water Permit, facility operators are required to collect storm water samples during two storm events, provided that these storm events occur during facility operating hours and are preceded by at least three working days without storm water discharge. See NPDES General Permit §5(a)-(b). As detailed in its annual reports, American Dismantling failed to gather required storm water samples for two (2) annual periods since 2012. American Dismantling gave the following reason for its failure to collect storm water samples in its 2012-2013 Annual Report: "no discharge from [the] yard" because "yard water flows into yard and walls and berm contain." **Exhibit 14.** American Dismantling did not give a reason in its 2013-2014 Annual Report for its failure to collect storm water samples for that period.

Storm event data belies American Dismantling's claim. The storm events for the 2012-2013 period meeting the criteria for reportable events are as follows: Thursday, October 11, 2012, .28 inches; Thursday, November 8, 2012, .14 inches; Thursday, November 29, 2012, .15 inches; Wednesday, December 12, 2012, .19 inches; Tuesday, December 18, 2012, .28 inches; Monday, December 24, 2012, .27 inches; Thursday, January 24, 2013, .21 inches; Friday, February 8, 2013, .36 inches; Tuesday, February 19, 2013, .34 inches; Thursday, March 7, 2013, .12 inches; and Monday, May 6, 2013, .14 inches.

The storm events for the 2013-2014 period meeting the criteria for reportable events are as follows: Wednesday, October 9, 2013, .18 inches; Monday, October 28, 2013, .19 inches; Thursday, November 21, 2013, .70 inches; Thursday, December 19, 2013, .32 inches; Thursday, February 6, 2014, .13 inches; Thursday, February 27, 2014, .30 inches; Wednesday, April 2, 2014, .15 inches; and Friday, April 25, 2014, .25 inches.

⁷ American Truck Dismantling is the predecessor of American Dismantling. American Truck Dismantling has ceased operations, per a phone conversation with agents of American Dismantling on April 30, 2014. The record owner of American Dismantling, Hasmik Kupalyan, was also the owner of American Truck Dismantling when it was in operation.

The storm events for the 2014-2015 period meeting the criteria for reportable events are as follows: Friday, November 21, 2014, .2 inches; Friday, December 12, 2014, 1.6 inches; Monday, January 16, 2015, .29 inches; and Monday, February 23, 2015, .24 inches.

The substantial frequency of storm events during these periods indicate that discharge likely occurred from the American Dismantling site during that time. Consequently, data indicates that American Dismantling failed to report these discharges in its annual reports and failed to sample these discharges, constituting violations of the Storm Water Permit.

American Dismantling has failed and continues to fail to revise the M&RP for the facility as necessary to ensure compliance with the Storm Water Permit, in violation of Section B(2)(d) of the Storm Water Permit. American Dismantling has failed to collect two (2) samples from each of the discharge points over the past three years, as required by Section B(15) and B(5)(a) of the Storm Water Permit. American Dismantling has failed to collect samples during the first storm event of the Wet Season over the past three years, in violation of Section B(15) and B(5)(a) of the Storm Water Permit. American Dismantling has failed to conduct visual observations of storm water discharges from all discharge points from one storm event per month in violation of Section B(4) of the Storm Water Permit. American Dismantling has failed to document the presence of any floating or suspended material, O&G, discolorations, turbidity, odor, or the source of any pollutants, in violation of Section B(4) of the Storm Water Permit. American Dismantling has failed and continues to fail to adequately revise the M&RP for the facility as necessary to ensure compliance with the Storm Water Permit, in violation of Sections A(9) and A(10) of the Storm Water Permit.

4. Failure to Comply with the Storm Water Permit's Reporting Requirements.

Information available to Waterkeeper indicates that American Dismantling has failed to meet the Storm Water Permit reporting requirements. American Dismantling has not sampled storm water in the 2012-2013 reporting period, stating in its annual report that "no discharge from [the] yard" because "yard water flows into yard and walls and berm contain." **Exhibit 14.** However, Regional Board inspection of the property in 2010 under the previous operator, American Truck Dismantling, noted that the implemented BMPs were "not sufficient to contain the myriad of leaks and spills on the facility grounds." Additionally, that inspection noted that "the secondary containment (basin) concrete berm is broken... thereby rendering it ineffective." **Exhibit 15.** Hasmik Kupalyan is the named officer of American Dismantling. He is also a landowner that has allowed and does allow numerous Clean Water Act violations to occur at the Properties. Thus, it is doubtful that American Dismantling has taken necessary steps to repair the broken containment berms and other issues noted in the 2010 inspection. As noted in the 2010 inspection, such issues result in leaks, and subsequently unlawful discharges from the American Dismantling site to the Receiving Waters. American Dismantling failed to give a reason for not collecting storm water samples in the 2013-2014 Annual Report. Information available to Waterkeeper indicates that American Dismantling failed to report qualifying discharges in its annual reports, and failed to sample these discharges, constituting violations of Storm Water Permit.

American Dismantling's certifications of compliance with the Storm Water Permit in each of its past two (2) Annual Reports were erroneous because American Dismantling has not developed and/or implemented the required BMPs, as required by Section A and B of the Storm Water Permit. American Dismantling's certifications of compliance with the Storm Water Permit in each of its past two (2) Annual Reports were erroneous because American Dismantling has not revised the SWPPP, as required by Sections A and B of the Storm Water Permit. American Dismantling's certifications of compliance with the Storm Water Permit in each of its past two (2) Annual Reports were erroneous because American Dismantling has not revised the M&RP, as required by Sections A and B of the Storm Water Permit. American Dismantling has failed and continues to fail to submit Annual Reports that contain explanations of their failures to implement activities required by the Storm Water Permit, as required by Section B(14) of the Storm Water Permit. American Dismantling failed to submit accurate Annual Reports, in violation of Sections C(9) and C(10) of the Storm Water Permit. American Dismantling failed to submit complete Annual Reports, in violation of Section B of the Storm Water Permit. American Dismantling has failed and continues to fail to submit required reports when storm water discharges from the facility exceed the Storm Water Permit Receiving Water Limitations identifying what additional BMPs will be implemented to achieve WQS, in violation of Receiving Water Limitations C(3) and C(4) of the Storm Water Permit. These acts and omissions constitute violations of the Clean Water Act, civil liability for which rests with American Dismantling.

IV. RELIEF AND PENALITIES SOUGHT FOR VIOLATIONS OF THE CLEAN WATER ACT

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for each violation occurring during the period commencing five (5) years prior to the date of a notice of intent to file suit letter. These provisions of law authorize civil penalties of up to \$37,500 per day, per violation, for all Clean Water Act violations on and after January 12, 2009. In addition to civil penalties, Waterkeeper will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), declaratory relief, and such other relief as permitted by law. Lastly, pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), Waterkeeper will seek to recover its costs, including attorneys' and experts' fees, associated with this enforcement action.

V. CONCLUSION

For the reasons set forth above, Waterkeeper intends to file suit against the Parties sixty days from the date of this notice under Section 505(a) of the Clean Water Act for the Parties' violations of the NPDES General Permit. Waterkeeper will prosecute these and similar violations, including all violations occurring after service of this notice, and all violations revealed upon discovery. Each instance of unlawful discharge constitutes a separate and distinct violation of the NPDES General Permit and of the Clean Water Act, resulting in additional civil liability. 33 U.S. §1311(a). Waterkeeper will pursue the maximum imposition of civil penalties

against the Parties for such violations, and whatever additional relief is necessary to ensure Clean Water Act compliance.

Waterkeeper is willing to discuss remedies for the violations described in this Notice of Intent to File Suit. Should the Parties collectively or individually wish to enter such discussions, or should the Parties have any questions regarding this notice, please contact Waterkeeper's legal counsel:

University of California Irvine School of Law
Environmental Law Clinic
401 E. Peltason Dr.
P.O. Box 5479
Irvine, CA 92616-5479
(949) 824-9660

Sincerely,

A handwritten signature in black ink, appearing to read "Colin Kelly", written over a horizontal line.

Colin Kelly
Staff Attorney
Inland Empire Waterkeeper
Orange County Coastkeeper

Exhibit 1

Photographic Evidence



Site Visit: September 27, 2013

- *The hole in the perimeter wall has been filled
- *The entire brick wall has been repainted light blue.

Site Visit: March 17, 2012



Site Visit: September 27, 2013

* Depicting car parts stacked visibly over exterior wall of property



Site Visit: March, 2014

*Depicting a drainage hole in the same place as the prior patched hole.



Site Visit: March, 2014

*Depicting storm water runoff from the drainage hole.